D.B. Criminal Misc. Petition No. 1781/2006
In
D.B. Criminal Appeal No. 779/2003
(Gangadhar & Anr. Vs. State of Rajasthan)

11.9.2006

Hon'ble Mr. Justice Shiv Kumar Sharma
Hon'ble Mr. Justice Chatra Ram

Mr. Sumer Singh for the petitioner
Mr. R.P. Kuldeep, PP for the State

Heard learned counsel for the appellants and learned PP on the misc. petition filed on behalf of the appellants under Section 482 Cr.P.C.-wherein prayer has been made to correct the bonafide typing error occurred in the judgement dated August 11, 2006.

2. We have been taken through the following observation made in the said judgement:-

"In the ultimate analysis we find that charges under Sections 363 and 376(2) IPC and Sections 3(1)(x) and 3(2)(v) SC/ST (PA) Act, 1989 are established beyond reasonable doubt against the appellants Gangadhar and Sumer Singh. The prosecution has proved that the appellants had committed gang rape. Learned trial Judge convicted the appellants under section 376(2) IPC to suffer imprisonment for life and fine Rs. 5,000/- in default to further suffer one year rigorous imprisonment. In the facts and circumstances of the case on considering the fact that appellants Ganga Dhar and Sumer Singh were respectively of 32 and 20

years of age on the date of incident, in our opinion the ends of justice would be met in reducing their sentence from imprisonment for life to ten years rigorous imprisonment and fine."

(Emphasis supplied)

3. It is contended that despite the observation in regard to reducing of sentence, in the operative portion the sentence U/s. 363 IPC readwith Section 3(1) (x) and 3(2) (v) SC/ST (PA) Act was not reduced on account of bonafide typing mistake.

4. The question, therefore, arises at this juncture is:-

"Can the bonafide typing error be corrected after signing the judgement?

5. Section 362 of the Code of Criminal Procedure, 1973 provides as under:-

"Court not to alter judgment-Save as otherwise provided by this Code or by other law for the time being in force, no court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."

(Emphasis supplied)

6. Explaining the scope of Section 362 of the Code of Criminal Procedure, their Lordships of the

Supreme Court in Smt. Sooraj Devi Vs. Pyare Lal (AIR 1981 SC 736) indicated in para 4 as under:-

"A clerical or arithmetical error is an error occasioned by an accidental slip or omission of the Court. It represents that which the court never intended to say. It is an error apparent on the face of the record and does not depend for its discovery on argument or disputation. An arithmetical error is a mistake of calculation and a clerical error is a mistake in writing or typing."

7. In Master Construction Co. (P) Ltd. Vs. State of Orissa (AIR 1966 SC 1047) their Lordships of the Supreme Court defined accidental slip or omission thus:-

"...The accidental slip or omission is an accidental slip or omission made by the court. The obvious instance is a slip or omission to embody in the order something which the court in fact ordered to be done. This something described as a decretal order not being in accordance with the judgment. But the slip or omission may be attributed to the judge himself. He may say something or omit to say something which he did not intend to say or omit. This is described as a slip or omission in the judgment itself...."

8. Obviously the error noticed by us is a clerical error occasioned by an accidental slip which the Court never intended to say. As earlier noticed in

the judgement it was categorically observed as under:-

> “In the facts and circumstances of the case on considering the fact that appellants Ganga Dhar and Sumer Singh were respectively of 32 and 20 years of age on the date of incident, in our opinion the ends of justice would be met in reducing their sentence from imprisonment for life to ten years rigorous imprisonment and fine.”

9. But in the operative part of the judgement although the sentence under Section 376 (2) IPC from imprisonment for life to rigorous imprisonment for ten years and fine of Rs. 5,000/-, (in default to further suffer one year rigorous imprisonment), the order of reducing of sentence U/s. 363 IPC and Section 3(1) (x) and 3(2)(v) SC/ST (PA) Act, 1989, could not be passed.

10. It is an error apparent on the face of record and does not depend for its discovery on argument or disputation and it can be corrected in view of Section 362 Cr.P.C. Learned counsel for the appellants and learned PP after reading the judgement submitted that since it was a typing mistake, it can be corrected.

11. We accordingly allow the petition and direct that the operative part of the judgement shall read as under:-

> "..... while maintaining their conviction U/s. 363 IPC and section 3(1)(x) and 3(2)(v) SC/ST (PA) Act, 1989, we reduce their sentence from imprisonment for life to rigorous imprisoment for 10 years and fine of Rs. 5,000/- in default to further suffer one year rigorous imprisonment. The sentences are to run concurrently."

12. The Deputy Registrar (Judl.) is directed to inform concerned Jail Authority accordingly. This order shall form part of the judgement rendered in Gangadhar and Anr. Vs. State of Rajasthan (D.B. Criminal Appeal No. 779/2003) decided on August 11, 2006.

13. The misc. petition stands disposed of as indicated above.

(Chatra Ram),J. (Shiv Kumar Sharma),J.

DK/-